



(Billing Code 5001-06)

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 229 and 252**

**RIN 0750-AI26**

**Defense Federal Acquisition Regulation Supplement: Taxes -  
Foreign Contracts in Afghanistan (DFARS Case 2014-D003)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to notify contractors of requirements relating to Afghan taxes.

**DATES:** Comment date: Comments on the proposed rule should be submitted in writing to the address shown below on or before [Insert date 60 days after date of publication in the **FEDERAL REGISTER**], to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2014-D003, using any of the following methods:

- o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2014-D003" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2014-D003." Follow the

instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2014-D003" on your attached document.

- o E-mail: osd.dfars@mail.mil. Include DFARS Case 2014-D003 in the subject line of the message.

- o Fax: 571-372-6094.

- o Mail: Defense Acquisition Regulations System, Attn: Ms. Jennifer Hawes, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <http://www.regulations.gov>, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Jennifer Hawes, telephone 571-372-6115.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is proposing to revise the DFARS to add two new clauses to notify contractors of requirements relating to Afghan taxes for contracts performed in Afghanistan.

**II. Discussion and Analysis**

Agreements established between the United States (U.S.) Forces and the Afghanistan government exempt U.S. contractors from paying liability for Afghan taxes. The two clauses included in the proposed rule, which implement the tax exemptions, are as follows:

- DFARS 252.229-70XX, Taxes-Foreign Contracts in Afghanistan, would be required to be included in all solicitations and contracts with performance in Afghanistan, unless the clause at 252.229-70YY is used. The Agreement regarding the U.S. Forces and Afghanistan also exempts the acquisition, importation, exportation, and use of articles and services in the Republic of Afghanistan by or on behalf of the Government of the United States of America in implementing this agreement from any taxes, customs, duties, or similar charges in Afghanistan, and contractors shall exclude any Afghan taxes, customs, duties, or similar charges from contract prices.

- DFARS 252.229-70YY, Taxes-Foreign Contracts in Afghanistan (Military Technical Agreement), would be required to be included in all solicitations and contracts with performance in Afghanistan awarded on behalf of NATO if approval from the Director, Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, is obtained prior to each use.

### **III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### **IV. Regulatory Flexibility Act**

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because this rule applies to requirements for taxes to be paid under contracts that are performed in Afghanistan. However, an initial regulatory flexibility analysis has been performed and is summarized as follows.

This rule proposes to amend the DFARS by incorporating DFARS clause 252.229-70XX, Taxes-Foreign Contracts in Afghanistan, to be used in all solicitations and contracts with performance in

Afghanistan, unless DFARS clause 252.229-70YY is used. This rule also includes DFARS clause 252.229-70YY, Taxes-Foreign Contracts in Afghanistan (Military Technical Agreement), to be used in all solicitations and contracts with performance in Afghanistan awarded on behalf of NATO, which are governed by the Military Technical Agreement, and upon approval of the Director, Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics.

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities because this rule addresses requirements for taxes under contracts performed in Afghanistan. The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2014-D003), in correspondence.

## **V. Paperwork Reduction Act**

The rule does not contain information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

## **List of Subjects in 48 CFR Parts 229 and 252**

Government procurement.

**Amy G. Williams,**

Deputy, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 229 and 252 are proposed to be amended as follows:

1. The authority citation for parts 229 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

**PART 229—TAXES**

2. Amend section 229.402-70 by adding paragraphs (k) and (l) to read as follows:

**229.402-70 Additional provisions and clauses.**

\* \* \* \* \*

(k) Use the clause at 252.229-70XX, Taxes—Foreign Contracts in Afghanistan, in all solicitations and contracts with performance in Afghanistan, unless the clause at 252.229-70YY is used.

(l) Use the clause at 252.229-70YY, Taxes—Foreign Contracts in Afghanistan (Military Technical Agreement), in all solicitations and contracts with performance in Afghanistan awarded on behalf of NATO, which are governed by the Military Technical Agreement, if approval from the Director, Defense Procurement and Acquisition Policy, Office of the Under

Secretary of Defense for Acquisition, Technology, and Logistics, has been obtained prior to each use.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

3. Add section 252.229-70XX to read as follows:

**252.229-70XX Taxes—Foreign Contracts in Afghanistan.**

As prescribed in 229.402-70(k), use the following clause:

**TAXES—FOREIGN CONTRACTS IN AFGHANISTAN (DATE)**

(a) This acquisition is covered by the Agreement regarding the Status of United States Military and Civilian Personnel of the U.S. Department of Defense Present in Afghanistan with Cooperative Efforts in Response to Terrorism, Humanitarian and Civic Assistance, Military Training and Exercises, and other Activities, entered into between the United States and Afghanistan, which was concluded by an exchange of diplomatic notes (U.S. Embassy Kabul note No. 202, dated September 26, 2002; Afghanistan Ministry of Foreign Affairs notes 791 and 93, dated December 12, 2002, and May 28, 2003, respectively), and entered into force on May 28, 2003.

(b) The Agreement exempts the Government of the United States of America and its contractors, subcontractors, and contractor personnel from paying any tax or similar charge assessed within Afghanistan. The Agreement also exempts the acquisition, importation, exportation, and use of articles and services in the Republic of Afghanistan by or on behalf of the Government of

the United States of America in implementing this agreement from any taxes, customs, duties, or similar charges in Afghanistan.

(c) The Contractor shall exclude any Afghan taxes, customs, duties, or similar charges from the contract price.

(d) The Agreement does not exempt Afghan employees of DoD contractors and subcontractors from Afghan tax laws. To the extent required by Afghan law, the Contractor shall withhold tax from the wages of these employees and to remit those payments to the appropriate Afghanistan taxing authority. These withholdings are an individual's liability, not a tax against the Contractor.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts, including subcontracts for commercial items.

(End of clause)

4. Add section 252.229-70YY to read as follows:

**252.229-70YY Taxes—Foreign Contracts in Afghanistan (Military Technical Agreement).**

As prescribed in 229.402-70(1), use the following clause:

**TAXES—FOREIGN CONTRACTS IN AFGHANISTAN (MILITARY TECHNICAL AGREEMENT) (DATE)**

(a) This acquisition is covered by the Military Technical Agreement (MTA) entered into between the International Security Assistance Forces (ISAF) and Interim Administration of



Afghanistan in April 2002 and the 2011 Letter of Interpretation issued on March 9, 2011.

(b) The MTA establishes the basic rules and exempts NATO/ISAF and its contractors and subcontractors from paying any tax or similar charge assessed within Afghanistan. The MTA also exempts the acquisition, importation, exportation and use of supplies and services in Afghanistan from all Afghan taxes, fees, duties or other form of revenue generation.

(c) The Contractor shall exclude any Afghan taxes, customs duties or similar charges from its contract price, except as modified in paragraph (d) of this clause.

(d) The ISAF 2011 Letter of Interpretation modified the MTA's tax exemption effective March 21, 2011.

(1) Local contractors are subject to tax for profits earned from NATO/ISAF contracts or subcontract and may include that tax in its contract price. The goods, materials, and supplies acquired and the services provided by local contractors for the use of NATO/ISAF, NATO member states, and non-NATO member states participating in the ISAF remain exempt from other taxes, duties, sales or other taxes, import fees, or fees of any kind. The Contractor may include the tax on profits in the contract price.

(2) Afghan citizens employed by NATO/ISAF contractors and subcontractors are subject to Afghan tax laws. To the extent

required by Afghan law, the Contractor shall withhold tax from the wages of these employees and to remit those withholdings to the Afghanistan Revenue Department. These withholdings are an individual's liability, not a tax against the Contractor.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts including subcontracts for commercial items.

(End of clause)

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